



October 11, 1991

Ms. Donna Searcy, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Perla Acosta Ojeda (BPH-9010705-MC)

Attn: James Crutchfield
Mass Media Bureau - Room 132

Dear Madam Secretary:

Enclosed please find Comments In Opposition To
Applicant's Response, in triplicate, filed on
behalf of Rosemary Houston.

If any additional information is required, please
contact me.

Yours truly,

Glen L. Houston

gh/o

Federal Communications Commission
Washington, D. C. 20554

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
SECRETARY

RE:) File No. BPH-910705ME
Application of)
Perla Acosta Ojeda)
For A Construction Permit)
for a New FM Service on)
Channel 24eA in Hobbs, NM)

TO: Chief, FM Branch
Policy & Rules Divison
Mass Media Bureau

COMMENTS IN OPPOSITION TO APPLICANT'S RESPONSE

Whereas, the Federal Communications Commission is in receipt of the Response filed by Applicant Ojeda with regards to the Petition to Dismiss filed by Rosemary Houston, the following comments are made:

1. Applicant Ojeda represented in her application for the new FM Service to Hobbs, New Mexico that sufficient funds were on hand or committed for the construction of the facility and its operation for the initial three months.

The attorney's affidavit attached to the Petition to Dismiss swears that the financial institution was and remains unwilling to enter in to a loan to Ojeda for the expressed purpose of constructing an FM Broadcast Station.

Furthermore, the banker listed on the Ojeda application, D. Kirk Edens, is no longer with the United New Mexico Bank, and all attempts to verify the commitment of the aforementioned institution indicate that no such agreement has been entered in to; and, while it may not be necessary for the applicant to have finalized the loan prior to submitting her application, the Commission's rules clearly state that the source must be "committed". See Exhibit A attached.

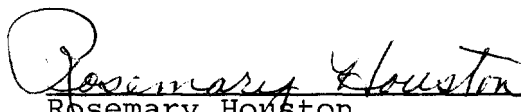
2. Rosemary Houston, as a 36 year resident of the city of license, recognizes the adverse effects of a poorly financed broadcast service being placed on the air, and is certain that damages will follow to all broadcasters within the community should another station fail in its attempt to operate during the current depressed economy in Hobbs.

With regards to this, she requests that the Commission

investigate the claim of committed resources by requesting of Ojeda the documentation of such funds, her detailed balance sheet of 90 days prior to the application being filed and federal income tax returns for the previous two years.

3. Petitioner respectfully suggests that the financial qualifications representations made by applicant Ojeda are material and a willful misrepresentation is violative of the character policy of the Commission.

WHEREFORE, failing applicant Ojeda's satisfying the Commission's rule relating to financial qualifications, petitioner Ms. Houston prays that the Ojeda application be dismissed with prejudice.


Rosemary Houston
1000 East 3rd Street

(1)

Section 310 of the Communications Act has been interpreted with respect to limited partnerships to prohibit equity contributions or voting interests of alien limited partners, which in the aggregate exceed 20% in a broadcast licensee or which in the aggregate exceed 25% in a partnership which holds a controlling interest in a broadcast licensee. The interests held by aliens in a licensee through intervening domestically organized limited partnerships can be determined by multiplication of any intervening insulated interests in the manner set forth above with respect to corporate applicants, except that insulated limited partnership interests exceeding 50% may be multiplied rather than considered as a 100% interest. However, the multiplier is not used in calculating the limited partnership link in the ownership chain **UNLESS** the applicant is able to certify that the alien partner is effectively insulated from active involvement in the partnership affairs. For example, see Instruction A, above.

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

- E. Commission policies and litigation reporting requirements for broadcast applicants have been revised with a view to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with its rules and policies. The categories of relevant non-FCC misconduct include: (1) misrepresentations to any other governmental unit resulting in criminal or civil violations; (2) criminal convictions involving false statements or dishonesty; (3) certain felony convictions; and (4) adjudicated violations of anticompetitive or antitrust laws that are broadcast related. The parameters of the revised policies and requirements are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rod 421 (1986).

INSTRUCTIONS FOR SECTION III - FINANCIAL QUALIFICATIONS

- A. All applicants filing Form 301 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.
- B. An applicant for a new station must attest it has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate for three months without additional funds. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.
- C. Documentation supporting the certification of financial qualifications need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.
- D. (1)(a) The applicant must estimate the initial costs of constructing and operating the facility proposed in the application. The estimate for constructing the facility should include, but is not limited to, costs incurred for items listed below. In calculating costs for the items below, determine the costs for the items in place and ready for service, including amounts for labor, supervision, materials, supplies, and freight:
- Antenna System (including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting);
 - RF Generating Equipment (including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger);
 - Monitoring and Test Equipment (including frequency monitor, modulation monitor, oscilloscope, dummy load, vectorscope, and video monitors);
 - Program Origination Equipment (including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment);
 - Acquiring Land;
 - Acquiring, Remodeling or Constructing Buildings;

(2)

Services (including legal, engineering, and installation costs); and

Other Miscellaneous Items (including mobile and STL equipment, non-technical studio furnishings, etc.)

- (b) The estimate must also include the costs of operating the proposed facility for the first three months, including the costs of proposed programming, without relying on advertising or other revenues to meet operating costs. To arrive at an estimate of the total costs to be met by the applicant, the total construction costs should be added to the estimated cost of operation for three months.

- (2) The applicant must also identify, in the application, its sources of funding for the construction and operation of the proposed facility for the first three months. For each source of funding, the applicant must identify the source's name, address, telephone number, a contact person if the source is an entity, the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by the source. The total amount of funds to be supplied by all the sources listed should equal or exceed the estimated cost of construction and operation computed in accordance with paragraph (1) and stated in the application in response to Question 2, Section III.

The funding sources listed on the application should include, if applicable: existing capital, new capital, loans from banks (identified separately), loans from others (identified separately), profits for existing operations, donations, and net deferred credit from equipment suppliers (identified separately and determined by deducting from the deferred credit the down payment, payments to principal, and interest payments). (Note: If the first equipment payment is due upon shipment, the applicant must include five monthly payments; if due in 30 days, four monthly payments; if due in 60 days, three monthly payments, etc.)

- (3) The applicant must also have on hand, at the time it files its application, BUT NEED NOT SUBMIT WITH THE APPLICATION, the following documentation:

- (a) For the applicant:

A detailed balance sheet at the close of a month within 90 days of the date of the application showing the applicant's financial position.

A statement showing the yearly net income, after Federal income tax, for each of the past two years, received by the applicant from any source.

- (b) For each person identified in response to Question 3, Section III, who has already furnished funds, purchased stock, extended credit, or guaranteed loans:

A copy of the agreement obligating the party to furnish funds, showing the amount furnished, the rate of interest, the terms of repayment, and security, if any.

- (c) For each person identified in response to Question 3, Section III, who has agreed to furnish funds, purchase stock, extend credit, or guarantee loans, a balance sheet or a financial statement showing:

All liabilities and current and liquid assets sufficient to meet current liabilities;

Financial ability to comply with the terms of the agreement to furnish funds, purchase stock, extend credit, or guarantee loans; and

Net income after Federal income tax, received for the past two years.

Note: If the statement does not indicate current and liquid assets sufficient to meet the proposed commitments, the financial statement must be supplemented by a statement showing how non-liquid assets will be used to provide the funds, and the extent to which such assets have liens or prior obligations against them.

- (d) For financial institutions or equipment manufacturers, identified in response to Question 3, Section III, who have agreed to make a loan or extend credit:

The document by which the institution or manufacturer has agreed to provide the loan or credit, showing the amount of loan or credit, terms of payment or repayment of the loan, collateral or security required, rate of interest to be charged, and special requirements (e.g., moratorium on principal or interest, waiver of collateral, etc.); and

A statement from any parties required to provide special endorsements showing their willingness to provide such endorsements.

(13)

E. It is Commission policy not to approve extensions of time for construction on the basis of financial inability or unwillingness to construct.

INSTRUCTIONS FOR SECTION IV-A - PROGRAM SERVICE STATEMENT

Applicants need only file a program service statement called for in Section IV-A of this application. See Deregulation of Radio, 84 FCC 2d 968 (1981), reconsideration denied, 87 FCC 2d 797; and Commercial TV Stations, 98 FCC 2d 1078 (1984), reconsideration denied, 60 RR 2d 526 (1986).

INSTRUCTIONS FOR SECTION IV-B - INTEGRATION STATEMENT

The applicant's integration statement must identify each principal who will participate in the management of the station, his or her position, duties and hours, and for each principal whether a qualitative credit will be claimed for minority status, past local residence, female status, broadcast experience or civic activity. Any claim for "daytimer" preference must also be stated. An applicant may include its integration statement in this application, but it must file its integration statement with the Commission by the amendment as-of-right date in FM proceedings, or the "B" cut-off date in AM and television proceedings. If an applicant fails to disclose its integration statement by the amendment as-of-right or "B" cut-off date, whichever is applicable, it will receive no credit for integration in the comparative hearing.

INSTRUCTIONS FOR SECTION V - ENGINEERING DATA AND ANTENNA AND SITE INFORMATION

- A. An indication as to the specific transmitter make and model is not required on the application. Rather, any subsequent permit authorizing construction will require installation of a type accepted transmitter or one complying with the provisions of 47 C.F.R. Section 73.1660. Applicants for AM facilities are reminded of the maximum rated power limitations for transmitters imposed by 47 C.F.R. Section 73.1665.
- B. Prior to January 4, 1982, parties submitting AM directional antenna patterns pursuant to 47 C.F.R. Sections 73.150 and 73.152 (standard patterns and modified standard patterns) had to submit patterns which were tabulated and plotted using units of millivolts per meter at one mile. Beginning on January 4, 1982, such patterns must be tabulated and plotted using units of millivolts per meter at one kilometer. Applications which are amended should use the units in effect as of the day of submission of the amendment. Applications which were on file prior to January 4, 1982, need not be amended solely for the purpose of conversion to metric units. Applications which are submitted using the wrong units will be returned unless they are promptly amended to use the correct units. See 47 C.F.R. Section 73.181(f) concerning uses of the metric system with AM stations.
- C. When applying for FM station construction permit, one of the submissions required by FCC Form 301, Section V-B, is a 7.5 minute series U.S. Geological Survey topographic quadrangle map upon which is marked the transmitter site. The Commission recommends that applicants submit at least one original copy of each appropriate full-scale USGS quadrangle map, if available, with the transmitter site properly marked and labeled.

In order to allow the Commission's processing staff to verify the correctness of the geographic coordinates provided in an FM application, it is necessary for this site map to show along the printed margin of both axes at least two coordinate markings, specifically labeled by the USGS, one on either side of the marked site. Additionally, a scale of kilometers (if available) or miles and all of the identifying map information must be included. The site should be plotted on a full scale map, and all of the contour lines must be clearly visible. Faded, smudged or otherwise illegible maps are unacceptable. Photocopies are acceptable in lieu of actual USGS maps, provided they are clear, dark and legible. It is not necessary to submit an entire map (although this is perfectly acceptable), but only as much as is necessary to fully comply with the requirements described above.

In certain cases it may be inconvenient to provide a full scale photocopy which includes both the site and the margins. This can occur when the site lies toward the center of the map. In this case the following alternative is acceptable. Provide a full scale copy of the section of the map containing the site. This copy must include either four of the standard printed cross-marks or one margin and two cross-marks. Fine lines should be drawn between the marks in such a fashion as to enclose the site. Each of these lines should be labeled with the appropriate latitude or longitude. This full scale map section must include all the information specified in the previous paragraph. In addition, a reduced copy of the entire map must be included to allow the Commission's staff to verify that the lines have been correctly labeled.

- D. The latitude and longitude coordinates for all points in the United States are based upon the 1927 North American Datum (NAD 27). The National Geodetic Survey is in the process of replacing NAD 27 with the more accurate 1983 North American Datum (NAD 83) and updating current topographic maps with NAD 83 datum. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data using two different datums, however, the Commission announced that until

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 100,000

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
PERLA ACOSTA OJEDA 110 SOUTH WILLOW HOBBS, NEW MEXICO 88240	505-393-8053	SELF	\$40,000
UNITED NEW MEXICO BANK D...KIRK EDENS EXECUTIVE VICE PRESIDENT P.O. BOX 1290 HOBBS, NEW MEXICO	505-397-3271	BANKER	\$60,000